IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7495 OF 2005

Smt. Nirmalaben Shambhuprasad Patel
since deceased, through her heirs & ors... Petitioners

V/s

C.J. Patel & anr. ... Respondents

Ms. Anjali N. Helekar for the petitioners.

Mr. P.R. Gyani for respondent Nos.1 & 2.

CORAM: S.U. KAMDAR, J.

DATED: 22ND NOV., 2005

P.C.:

1. The present petition is filed against the order passed in Spl. Civil Suit No. 326 of 1997 dated 7.10.2005 by which an application Exh.146 preferred by the petitioner plaintiff has been rejected. The application which has been preferred by the petitioners is to implead certain occupants of the structure on the suit property as party defendants to the suit. The suit is filed for declaration that the plaintiffs are the owner in respect of the suit property and are entitled to vacant possession thereof and vide prayers (b), (c) & (d) of the plaint, the plaintiffs are also claiming that

the defendants to remove the structures which are lying on the said property and hand over peaceful and vacant possession of the suit land.

2. Admittedly, said structures are occupied by the persons who are proposed to be impleaded as party defendants in the present suit. In my opinion, they are the necessary party in view of the fact that the demolition of structure which is in their occupation has been sought by the plaintiffs. The learned counsel for the respondent-defendants has opposed the application, firstly on the ground that this is a belated application. Such a ground has no substance as amendment can be granted at any stage of the proceeding. The next contention has been raised that they are not necessary and proper party since they are tenants and they are claiming through the defendants. In my opinion, even if it is so, ultimately defendants at the time of execution of the decree it would create multiplicity of proceedings by way of obstruction by the said tenants as they are not heard before the structures in which they are claiming interest by way of tenant is ordered to be demolished byy the Court. In that view of the matter, the order passed by the Trial Court is not sustainable.

3. The petitioners have also challenged the order dated 18.10.2005 by which the petitioners' cross-examination was closed for the reasons set out in the said order which is at page 79 of the petition. Having considered the said page 79 to the petition and the affidavit filed at page 77 in which it has been mentioned that the adjournment was sought for the purpose of challenging the order passed on Exh.146. I am of the opinion that the learned Judge ought not to have closed the cross-examination and should have granted short adjournment. I find that, in the light of the order passed permitting the petitioners/plaintiffs to add the new defendant, the order dated 18th October, 2005 is also required to be quashed and set aside. In so far as the trial of the suit is concerned, I am of the opinion that the trial of the suit must be heard expeditiously which order has already been granted by this Court. In the light of the newly added defendants, the time schedule is fixed as under :-

The plaintiffs will carry out the amendment within a period of two weeks from today and serve the newly added defendants within a period of three weeks thereafter. The newly added defendants to file their

reply within a period of six weeks from the date of service of the writ of summons on them. The Trial Court will thereafter immediately frame the issues and after completing the discovery, etc. will commence the evidence immediately and in any event dispose of the suit on or before 31st December, 2006.

4. The learned advocate for the petitioners/plaintiffs gives an undertaking that the petitioner will cooperate with the Trial Court in completion of the suit expeditiously and will not seek any unnecessary adjournments.

5. Petition disposed of accordingly with no order as to costs.

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